

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO ADOPT CHAPTER 72 OF THE CODE OF SUSSEX COUNTY RELATING TO MODERATELY PRICED HOUSING UNITS.

WHEREAS, it is determined that in order to better serve the health, safety and welfare of the citizens of Sussex County, it is necessary to revise the Code of Sussex County to adopt an Ordinance that will promote the provision of moderately priced housing units for the citizens of the County; and

WHEREAS, Council believes that a severe housing shortage exists within the County with respect to the supply of housing for residents with moderate incomes; and

WHEREAS, Council believes that this Ordinance will address the housing shortage for citizens with moderate incomes.

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

**§72-1 TITLE AND SCOPE**

This chapter shall be known as the “Moderately Priced Housing Unit Code”, which establishes a program to stimulate the provision of a supply of housing to citizens with moderate incomes.

**§72-2 INTENT**

This chapter is intended to better serve the health, safety and welfare of the citizens of Sussex County by providing a program which will stimulate the provision of housing for residents with moderate incomes.

**§72-3 GOVERNMENTAL FINDINGS**

The Sussex County Council hereby finds that a severe housing problem exists within the County with respect to the supply of housing relative to the need for housing for residents with moderate incomes. Specifically, the Council finds that:

- A. The County is experiencing a rapid increase in residents. From 1990 to 2000, the County’s population increased by 38.3 percent from a population of 113,229 persons to 156,638. Most of this increase is from the “young elderly”, consisting of persons entering pre-retirement or early retirement that are financially well off.
- B. This rising influx of affluent households has resulted in a demand for public utilities, health and human services, government services, and retail and service businesses thereby increasing the need for housing for persons of moderate income who are employed in the stated capacities.

- C. In turn, the supply of moderately priced housing has decreased over the past 10 years as housing costs have escalated due to the influx of affluent households. The most recent real estate data suggests that a household earning 80% of the area median income cannot afford a home anywhere in Sussex County. Households earning 100% and 115% of the area median income can only afford homes in the most western areas of Sussex County.
- D. Based on the most recent Department of Labor data, 86% of the Sussex County workforce earns less than 80% of the area median income.
- E. Based on this information, it is clear that new development does not adequately serve the housing needs of the County's workforce. Continuation of this trend will have a negative effect upon the ability of local employers to maintain an adequate local work force.
- F. The inadequate supply of housing for the County's workforce is increasing the commuting distance to employment, in some instances outside of County lines. This imbalance between jobs and housing has serious and detrimental transportation and environmental consequences. Longer commuting overtakes existing roads and transportation facilities, significantly contributing to air and noise pollution and traffic congestion, and engendering greater than normal personnel turnover in the businesses, industry, and public agencies of the County, all adversely affecting the health, safety, and welfare of the citizens of the County.
- G. Experience indicates that the high level of demand for more luxurious housing will continue (especially because of the resort area in Eastern Sussex) discouraging developers from offering a more diversified range of housing. The production of moderately priced housing is further deterred by the high cost of land, materials and labor.
- H. Experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built at a price affordable to moderate-income households and still sold at a profit to the developer.
- I. Every indication is that, given the proper incentives, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County.

#### **§72-4 DECLARATION OF PUBLIC POLICY.**

The Sussex County Council hereby declares it to be public policy of the County to:

- A. Provide a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;
- B. Provide for moderate income housing to meet the existing and anticipated future employment needs in the County;
- C. Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;
- D. Encourage the construction of moderately priced housing by allowing increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing;
- E. Encourage developments with 35 or more dwelling units on public water and sewer and located in one the following districts as depicted in the Sussex County Comprehensive Plan: Town Centers, Development Districts, and the Environmentally Sensitive Development District to include a minimum number of moderately priced units of varying size with regard to family needs
- F. Strive to ensure that private developers constructing moderately priced dwelling units have reasonable prospects of realizing a profit on such units by virtue of the MPHU density bonus program;
- G. Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that moderate-income households can afford by letting a developer, under specified circumstances, comply with this Section by contributing to a County Housing Initiative Fund;
- H. Allow developments that contain qualified projects to fully utilize the zoning the property has been designated;
- I. Allow developers who are building qualified projects an expedited review period.

## **§72-5 DEFINITIONS**

The following words and phrases have the following meaning:

1. **Moderately Priced Housing Unit or MPHU.** A dwelling unit which is;
  - a. Offered for sale to eligible persons through the Department and sold under this Section, or
  - b. Sold under a government program designed to assist the construction or occupancy of housing for families of moderate income, and designated by the Director as an MPHU.

2. **Applicant.** Any person, firm, partnership, association, joint venture, corporation or any other entity or combination of entities, and any transferee of all or part of the land at one location, who after this Chapter takes effect:

- a. Submits for approval or extension of approval a preliminary plan of subdivision, which plan provides for the development of a total of thirty-five (35) or more dwelling units (located in one the following districts as depicted in the Sussex County Comprehensive Plan: Town Centers, Development Districts, and the Environmentally Sensitive Development District, provided the proposal is on public water and sewer) at one location in one or more subdivision, parts of subdivisions, resubdivisions, or stages of development, regardless of where any part of the lands has been transferred to another party; or
- b. Submits to the Sussex County Planning and Zoning Office or to the Director of Planning and Zoning a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of thirty-five (35) or more dwelling units (located in one the following districts as depicted in the Sussex County Comprehensive Plan: Town Centers, Development Districts, and the Environmentally Sensitive Development District, provided the proposal is on public water and sewer) at one location; or
- c. With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits, which permit(s) are for the construction of a total of thirty-five (35) or more dwelling units at one location on public water and sewer.

3. **At One Location.** All adjacent land of the applicant if:

- a. The property lines are contiguous or nearly contiguous at any points; or
- b. The property lines are separated only by a public or private right-of-way at any point; or
- c. The property lines are separated only by other land of the applicant with is not subject to this Section at the time of any permit, site plan, development or subdivision application by the applicant.

4. **Available For Building Development.** All land:

- a. Owned by, or under contract to, the applicant;
- b. Zoned for any type of residential development to which a density provision applies;

- c. Which is already subdivided or is ready to be subdivided for construction or development.
5. **Control Period.** The time a MPHU is subject to resale price controls and owner occupancy requirements. The control period is 20 years for sale units, and begins on the date of initial sale.
6. **Date of Original Sale.** The date of settlement for purchase of a MPHU.
7. **Department.** The Department of Housing and Community Development, Sussex County or its designated administrative body.
8. **Director.** Except as otherwise indicated, means the head of the Department of Housing and Community Development of Sussex County.
9. **Dwelling Unit.** A building or part of a building that provides complete living facility for one family, including at a minimum facilities for cooking, sanitation and sleeping.
10. **Eligible Person.** A person or household whose has been found eligible to participate in the MPHU program, and who hold a valid certificate of eligibility from the Department.
11. **Housing Initiative Fund or HIF.** A fund established by the Sussex County Council and managed by the Department of Housing and Community Development to facilitate affordable housing.
12. **Moderate Income.** Those levels of income, established by the Director, which prohibit or severely limit the financial ability of persons to buy housing in Sussex County, at a figure not to exceed 125% of Area Median Income adjusted for household size as defined by the Department of Housing and Urban Development.
13. **Density Bonus Provision.** Any increase in density in a zoning classification that allows residential development above the amount permitted in the base, standard method or maximum allowable densities per acre under current and future existing zoning ordinances.
14. **Priority Marketing Period.** The period an MPHU must be offered exclusively for sale to eligible persons.

## **§72-6 INCOME AND ELIGIBILITY STANDARDS OF HOME PURCHASERS**

1. The Director must establish standards of eligibility for the MPHU program in regulations adopted by the County Council, and must revise the standards when changes in market condition affect the ability of moderate-income

households to buy housing. These standards must establish moderate-income levels for varying sizes of households, which will qualify a person or household to buy a MPHU.

2. In establishing standards of eligibility and moderate income levels the Director must consider:
  - a. The price established for the sale of a MPHU under this Section
  - b. The term and interest rate that applies to the financing of a MPHU.
  - c. The estimated level of income necessary to carry a mortgage on an MPHU and,
  - d. Family size and number of dependants
  - e. The maximum allowable income will be 125% of Area Median Income as defined by the US Department of Housing and Urban Development, adjusted for family size, and updated annually.
3. Eligible buyer(s) must be or must have been a permanent resident of Sussex County for a minimum of three years, and
4. Eligible buyer(s) must be currently employed in Sussex County for a minimum of one year prior to application with the Department. Receipt of income from sources other than wage or salary also accepted provided it has been received for a minimum of one year and can be properly documented.
5. The Director may alter such standards with approval from the Sussex County Council, for extenuating circumstances.

**§72-7 REQUIREMENT TO BUILD MPHUs (AGREEMENTS; ALTERNATIVES)**

1. Any applicant, in order to obtain a building permit, must submit to the Department of Planning and Zoning, with the application for a permit, a written MPHU agreement approved by the Director and the County Attorney. Each agreement must require that:
  - a. A specific number of MPHUs must be constructed on an approved time schedule;
  - b. In either single family dwelling unit or townhouse subdivisions, each MPHU must have 2 or more bedrooms; unless the structure is a condominium in which case one-bedroom units are permissible provided that:

- i. Their number must not exceed the ratio that market rate one-bedroom units respectively bear to the total number of market rate units in the subdivision.
2. When the development at one location is in a residential zone in which a density bonus is provided; and
  - a. Is covered by a plan of subdivision; or
  - b. Is covered by a plan of development or a site plan; or
  - c. Requires a building permit to be issued for construction; the required number of MPHU's is a percentage not less than 15% of the total number of housing units at that location. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPHU's as follows:

	<u><b>Tier A</b></u>	<u><b>Tier B</b></u>	<u><b>Tier C</b></u>
<b>MPHU's Required</b>	15%	15%	15%
<b>Density Bonus</b>	20%	25%	30%

Tier A = 100-125% of the Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size, and updated annually.

Tier B = 80-100% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size, and updated annually.

Tier C = Up to 80% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size, and updated annually.

3. Density bonuses are permitted as part of the MPHU program in the following districts as depicted in the Sussex County Comprehensive Plan: Town Centers, Development Districts, and the Environmentally Sensitive Development District, provided the proposal are on public water and sewer.

4. In addition to the above density bonus, Developments containing qualified MPHU's can fully utilize the zoning the property has been designated.
5. In planned development zones and mixed use zones containing flexible development standards, the number of MPHU's must not be less than either the number of density bonus units or 15% of the total number of dwelling units, whichever is greater.
6. In exceptional cases, instead of building the required number of MPHU's an applicant may offer to:
  - a. Build at least 10% more MPHU's at one or more other sites in the same or an adjoining area; or.
  - b. Contribute to the Housing Initiative Fund an amount that will produce at least 10% more MPHU's; or
  - c. Do any combination of these alternatives that will result in building at least 10% more MPHU's.
7. If the Director finds that:
  - a. In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPHU so much that it is likely to make the MPHU's effectively unaffordable by eligible households; and
  - b. An offer made by an applicant under Section 6 (a) will achieve at least 10% more MPHU's; and
  - c. These public benefits outweigh the benefit of constructing MPHU's in each subdivision throughout the County, and acceptance of the applicant's offer will achieve the objective of providing a broad range of housing opportunities throughout the County; the Director may accept the offer made by the applicant instead of requiring the construction of the MPHU's by the applicant. If the applicant can feasibly build at least 10% more MPHU's at another site, the Director must not approve any other alternative in Section 6 of this subsection.
8. The procedures for considering and implementing alternative offers must be established. The alternatives must be considered and decided upon prior to obtaining a permit and must be included in a written agreement approved by the Director and County Attorney.
9. MPHU agreements must be signed by the applicant, and other parties having an interest in the property and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real



- property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the principle officers of the corporation must sign the agreements individually and on behalf of the corporation. Partnerships, associations, or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Section.
10. The Department of Planning and Zoning must not issue a building permit in any subdivision or housing development in which MPHUs are required until the applicant submits a valid MPMU agreement, which applies to the entire subdivision.
  11. The MPMU agreement must include the number, type, and location of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Section.
  12. Recording of Covenants. The applicant must execute and record covenants that:
    - a. The restrictions of this Section run with the land for the entire period of control; and
    - b. The covenants will bind the applicant, any assignee, mortgagee, or buyer and all other parties that receive title to the property with the exception of the first lien mortgage holder. In the event the first lien mortgagee acquires the property through a foreclosure or acceptance of deed-in-lieu of foreclosure, the resale restrictions will be extinguished. The covenants must be senior to all instruments securing financing with the exception of the first lien mortgagee. The Director may allow down payment and settlement assistance type second mortgages priority lien position over the covenants if it appears necessary to promote affordable financing options for purchasers, and,
  13. Later deeds. The grantor must state, in any deed or instrument conveying title to an MPMU, the property is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released. The source of the deed restrictions must be included in the public land records so that they are readily identifiable in a routine title search.
  14. Other incentives will include:
    - a. Expedited Review. A project containing the eligible number of MPHUs will be allowed an expedited review period. An eligible number means that the project must meet the minimum threshold of 15% of MPHUs. If during the process the MPHUs are withdrawn from

the effective subdivision plan, the project must and will return to the bottom of the list and any preliminary approvals obtained for the development will be vacated.

- b. Fee Waivers. Consideration will be given by the Director to waiving some fees related to the MPHUs's.
- c. Relaxed Requirements as Appropriate. In order to foster healthy developments, and diverse developments containing MPHUs the Director may offer other incentives and relax other requirements that may not be necessary in the proposed development, provided a detailed plan from the developer. Approval for modifying any requirements will have prior County council approval.

## **§72-8 MAXIMUM PRICES OF MPHUs**

Moderately priced housing units must not be sold at prices that exceed the maximum prices established under this section.

### **1. Sales**

- a. The sale price of any MPHUs, must not exceed an applicable maximum sale price established from time to time by the Director in regulations adopted by the Sussex County Council.
- b. The Director in issuing MPHUs sale price limits must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the County, and must consult with the building industry, employers, and professional and citizens groups to obtain statistical information which may assist in setting a current maximum sale price. The Director must, from time to time, consider changes in the income levels of persons of moderate income and their ability to buy housing. The Director must also consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.
- c. The Director must issue maximum sale prices for MPHUs's, which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPHUs by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the Director, or on the prior year's maximum MPHUs price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

- d. The Director may make interim adjustments in maximum MPHU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on maximum MPHU sale prices previously established, adjust by the percentage change in the relevant cost elements indicated in the Consumer Price Index.
- e. If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPHU project will lessen the ability of eligible persons to afford MPHU's, the Director, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of MPHU's.
- f. The Director may let an applicant increase the sales price of an MPHU when the Director finds, in exceptional cases, that a price increase is justified to cover the cost of modifying the external design of the MPHU's when a modification is necessary to reduce excessive marketing impact of the MPHU's on the market rate units in the subdivision. The Director must approve the amount of any increase for this purpose, which must not exceed ten percent of the allowable base price of the unit.

## **§72-9 SALE OF MPHU**

### **1. Sale to General Public**

- a. Every MPHU required under this Program must be offered to the general public for sale to a good-faith purchaser to be used for his or her own residence.
- b. Before offering any MPHU's, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible persons. The notice must set forth the number of units offered, the bedroom mix, the floor area and any other information as the Director finds necessary. The Department must maintain a list of persons meeting the eligibility criteria and, in accordance with procedures established by the Director, must notify eligible persons of the offering.
- c. After receiving the offering notice, the Department must notify the Council of the offering. If the Department finds that the offering notice is complete, it will offer the units for a priority-marketing period.
- d. The Director may establish a participant selection system that considers household size, county residency, employment in the County and length of

time since the person was certified for the MPHU program. Each eligible person must be notified of the availability of an MPHU, which would meet that person's housing needs, and be given the opportunity to buy an MPHU during a priority-marketing period via a lottery. The Director with the approval of the County Administrator may establish criteria providing flexibility to meet certain specific housing needs i.e. workforce sectors.

- e. The priority-marketing period for new units ends after 90 days of the date approved by the Department. The priority-marketing period ends after 60 days for re-sold units after the Department notifies the seller of the approved resale price of the unit.
- f. The Department from time to time may extend the priority-marketing period.
- g. Any units still available after the priority-marketing period will be offered to the general pool of eligible persons via lottery.
- h. Every buyer of an MPHU must occupy the unit as his or her primary residence during the control period. Each buyer must certify before taking occupancy that he or she will occupy the unit as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit for resale to an eligible person under the resale provisions. Annual certification from homeowner is required to establish primary residency.
- i. During the initial control period after the original sale, and if resold, the subsequent control period, no liens will be permitted, without the written approval of the Director, on the MPHU property other than liens for unpaid real estate taxes or assessments for infrastructure improvements, except for the original purchase money mortgage, any secondary financing obtained solely to assist with down payment and closing costs and any lien validly recorded for unpaid homeowner association fees. Upon application to and approval by the Director, subordinate liens may be placed, if not prohibited by the purchase money mortgagee's deed of trust, for improvements to the MPHU property which would enhance the market value of the property by not more than 110% of the subordinate lien requested.
- j. An owner of an MPHU, except the Department, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit under applicable regulations, which may include maximum rental levels. Any MPHU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPHU covenants to extend the control period for a time equal and at a minimum of one year to the temporary rental period.

- k. The owner must pay any rent obtained for an MPHU that is rented without the Director's authorization into the Housing Initiative Fund within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the unit, and the Director may obtain a judgment and record the lien.
  - l. An applicant must not sell any unit without first obtaining a certificate of eligibility from the buyer. A copy of each certificate must be furnished to the Department and maintained on file by the Department. A person must not buy a second MPHU unless no other buyer is qualified to buy that unit. A person must not be a current owner of an existing MPHU, unless a pending sale is imminent of their housing unit. The Director may waive this restriction for good cause. If homeowner dies unit may be transferred to eligible family member.
  - m. If an owner of a MPHU dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPHU during the control period under this Section, or the owner of record must sell the MPHU to an eligible person. The new homeowner must be income eligible.
2. Sale to Department of Housing and Community Development, designated housing development agency, or nonprofit corporation with its core mission in housing.
- a. In view of critical, long term public needs for housing for families of moderate income, the Department or any other housing development agency or nonprofit corporation designated by the Director has the option to buy, for the intended purpose to resell the unit to a qualified homeowner at a later date, MPHU's, which do not have an eligible buyer at the time the property is marketed within the designated timeframe, the Director must establish standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPHU's satisfactorily on a long-term basis.
  - b. An eligible corporation purchasing MPHU's are responsible to the Department for the management of these units so as not to adversely affect the community in which they are located.
  - c. An eligible corporation may purchase MPHU's if no other eligible person is available, for marketing of their programs. The units are to be maintained for moderate-income households and the control period does not expire while the unit is under the control of this entity. If sold by the eligible corporation, the purchaser must be income eligible and the retention period must begin anew.

## **§72-10 CONTROL OF RESALE PRICES, FORECLOSURES**

1. Resale price and terms. Except for foreclosure proceedings, any MPHU constructed or offered for sale under this Program must not be resold during the control period for a price greater than the original selling price plus;
  - a. A percentage increase to what a moderate income family can now afford under the prevailing rates and terms at the time of resale according to published annual MPHU limits by the County and the tier in which the home was originally placed;
  - b. The fair market value of improvements made to the unit between the date of original sale and date of resale;
  - c. The resale price of an MPHU may also be reduced if the physical condition of the unit reflects abnormal wear and rear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPHU must be sold at its fair market value.
2. Resale requirements during the control period
  - a. Any MPHU offered for resale during the control period must first be offered exclusively for 60 days to the Department or the department's designee. The Department may buy a unit when funds are available and the Director finds that the Departments buying and reselling the unit will increase opportunities for eligible persons to buy the unit. If it does not buy the unit, the Department must notify eligible persons, housing development agencies, and qualified non-profits for the availability of a resale MPHU. The unit may be sold through either of the following methods.
    - i. The Department may by lottery establish a priority order under which eligible persons who express interest in buying the unit may buy it at the approved resale price.
    - ii. The Department may notify the MPHU owner that the owner may sell the unit directly to any eligible person under the resale provisions of this Program.
  - b. A resale MPHU may be offered for sale to the general public only after;
    - i. The priority marketing period expires; and
    - ii. All eligible persons, including eligible non-profits, who express an interest in buying it, have been given the opportunity to do so.

- c. The seller is required to submit to the Department prior to sale, for approval;
    - i. A copy of the proposed sales contract, including a list and the price of any personal property included in the sale
    - ii. Draft of the settlement sheet, and
    - iii. An affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.
  - d. A signed copy of the settlement sheet is to be provided to the Department immediately upon execution via facsimile from the settlement agent's office.
  - e. A transfer of an MPHU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.
  - f. If the unit is resold during the control period, then the control period begins anew.
3. First sale after control period ends unless other wise approved by the director.
- a. If an MPHU originally offered for sale is sold after its control period ends, there are no restrictions upon the seller.
4. Purchase money mortgages for MPHU's will be written such as to provide that the MPHU homeowner is required to provide a copy of any mortgage default notification (received from the first lien Mortgagee) to the Director within 10 days of receipt. In such event, the Director shall make every effort to work with the owner to reconcile the delinquency/default, including a deed in lieu of foreclosure, referral to an agency skilled in mortgage default counseling, sale to another eligible person or eligible non-profit corporation (if no eligible person exists). The Department will have 30 days from date of notification to assist the homeowner in curing the default. If the Director determines that the waiting list of eligible prospective MPHU purchasers warrants retaining the MPHU in inventory, the Director is authorized to notify the mortgagee (if funding is available) that the Housing Initiative Fund or eligible nonprofit entity guarantees to the mortgagee payoff of the principal, interest, and unpaid related advances due on the purchase money mortgage within 60 days, in return for any impending foreclosure action to be cancelled. This action will require the MPHU homeowner to agree to sell the property. The Mortgagee's Servicing Designee will act upon the request in accordance with their established loss mitigation policies. Should the latter not be obtainable and the default is not cured, the foreclosure would proceed. The Director reserves the right to bid at the sheriff sale for ownership of the property and thereby ensuring renewed affordability

restrictions. The Director will take into consideration the possible legal costs associated with eviction in determining whether to bid at the sheriff sale. If the lender is the successful bidder at sale, the Department (or its administrative body) has the option to pursue purchase of the property from the lender within 30 days of the foreclosure date. The Department assumes recourse for any necessary eviction proceedings. In that instance, the HIF pays the principle, interest and incurred fees to the mortgagee, whereupon the title to the MPHU property is passed to the HIF. The HIF will thereupon re-offer the property in accordance with the MPHU program to eligible persons, with the requirement that the HIF is made whole for monies spent in the process of obtaining the property in the MPHU program.

5. Foreclosures, Deeds-In-Lieu of Foreclosure, or other court-ordered sales. If an MPHU is sold through a foreclosure, deed-in-lieu of foreclosure or other court-ordered sales, a payment must be made to the HIF as follows (and thoroughly outlined in the covenants):
  - a. If the sale occurs during the first 20 years after the original sale, any amount of the foreclosure proceeds remaining, which exceeds the total of the approved resale price under subsection (1), reasonable foreclosure costs, and liens filed, must be paid to the HIF in lieu of the MPHU former homeowner. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (1) then the difference between the foreclosure sales price and the balance of the original first deed of trust (Remaining Balance defined as: outstanding principal, interest, taxes, insurance, and any foreclosure related expenses (including but not limited to any expenses of marketing the property), plus any other fees provided for under the mortgage) must be paid to the HIF in lieu of the MPHU former homeowner.
  - b. If the sale occurs after the 20-year control period, then no payment is necessary to the HIF.
6. Waivers. The Director may waive the restrictions on the sale or resale prices for MPHUs if the Director finds that the restrictions conflict with regulation of federal or state housing programs and thus prevents eligible persons from buying units under the MPHU program.
7. Compliance. The Sussex County Council must adopt regulations to promote compliance with this section and prevent practices that evade controls on sales of MPHUs.

## **§72-11        EXCEPTIONS**

## **§72-12        GOVERNMENT REGULATIONS, ENFORCEMENT**



1. The Department must maintain a list of all MPHUs constructed and sold under this Program, and the Sussex County Council may, from time to time, adopt regulation necessary to administer this program.
2. This Program applies to all agents, successors, and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this program. The Director of Planning and Zoning may deny, suspend, or revoke any building or occupancy permit upon finding a violation of this Program. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor, or assign of any applicant, for any construction that does not comply with this Program.
3. The Director is authorized to pursue any available remedy, legal, or equitable in nature, to enforce the requirements of this Program or to prevent or abate a violation of this Program.
4. The Director may take legal action to stop or cancel any transfer of an MPHU if any party to the transfer does not comply with all requirements of this Program. The Director may recover any funds improperly obtained from any sale or rental of an MPHU in violation of this Chapter.
5. In addition to or instead of any other available remedy, the Director may take legal action to:
  - a. Enjoin an MPHU owner who violated this Program, or any covenant signed or order issued under this Program, from continuing the violation, or
  - b. Require an owner to sell an MPHU owned or occupied in violation of this Program to an eligible buyer.
  - c. The Director may take action if the MPHUs are illegally rented or lease.

**§72-13        APPEALS**

**§72-14        APPLICABILITY**